IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4373 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI R PATEL

Versus

STATE OF GUJARAT

Appearance:

Mr. Karthik Pandya, for Mr. VIJAY H PATEL for Petitioner.

Mr. Sudhir Mehta for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 27/02/2002

ORAL JUDGEMENT

The petitioner has filed this petition before this Court praying for a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the respondent to return to the petitioner the amount of Rs. 10,000/= deposited by him before the jail authorities.

2. The petitioner was detained by order dated 1-11-1985 passed by the State Government under the provisions of Prevention of Blackmarketing and Maintenance and Supplies of Essential Commodities Act, 1980, and the petitioner was detained in Ahmedabad Central Jail.

3. The petitioner was thereafter released on parole by the State Government on 11-11-1985 upto 15-11-1985 because of the Diwali holidays on a personal bond of Rs. 10,000/=. The petitioner was required to surrender before the jail authorities on 16-11-1985. The petitioner has contended that he has suddenly fallen ill in the afternoon of 15-11-1985. He was admitted in the Civil Hospital, Ahmedabad, and was kept there as an indoor patient upto 22-11-1985. It was because of this reason he could not surrender in time before the jail authorities on 16-11-1985. As a result of his failure to surrender himself on 16-11-1985 the amount of Rs. 10,000/= deposited by him was forfeited by the Jail authorities.

4. It is the case of the petitioner that he had informed the jail authorities that he had been admitted in Civil Hospital, Ahmedabad and since he was to be treated as a prisoner in Civil Hospital the petitioner had also requested the jail authorities that he may be released till he is discharged from the hospital. The petitioner has further submitted in the petition that on frequent dates he was granted parole and he has surrendered himself after the completion of the said period of parole. On all the occasions, the amount deposited by him were returned by the State Government except on the first occasion when because of the special reasons stated above he could not surrender himself and the amount forfeited was not returned to him. The application made by the petitioner on 24-1-1986 was also rejected by the State Government on 30-5-1986 informing the petitioner that his prayer for returning the amount of Rs. 10,000/= was rejected by the State Government. It is this action of the State Government which is under challenge in the present petition.

5. On behalf of the respondent, an affidavit-in-reply was filed on 9th September 1986 wherein the facts stated by the petitioner in the petition were seriously disputed. Another affidavit-in-reply was also filed on behalf of the respondent on 22-9-1986 wherein it was stated that two letters, one dated 15-11-1985 from the wife of detenu and another dated 16-11-1985 written by the detenu himself

were on the Government record. It was further stated by letter dated 15-11-1985 written by the wife of the detenu that her physical condition was so weak and she had two minor daughters of 10 years and 5 years old and since there was nobody to look after their kids a parole for her husband for another 15 days was granted. There was no reference regarding the petitioner's illness in the said letter. Thereafter in another written letter dated 16-11-1985 the petitioner's illness was mentioned. However, on further enquiry by the respondent authorities with the Civil Hospital authorities it was found that the illness was not so serious that he could not surrender before the jail authorities. In any case the requisite details about petitioner's illness were also not furnished nor they could be obtained from the Civil Hospital. In any case, the respondent authorities were not satisfied with the reasons given by the petitioner for his failure to surrender before the jail authorities on 16-11-1985.

6. I have heard the learned advocate for the petitioner as well as the learned Assistant Government Pleader appearing for the respondent. I have also gone through the pleadings made in the petition as well as the affidavit-in-reply and perused the documents attached with the petition. After due consideration of all these materials and affidavits, I am of the view that once the petitioner has availed the period of parole, it is obligatory on his part to surrender himself before the jail authorities, and as found from the record that the alleged ground of illness was not weighed so much with the respondent authorities he could have surrendered before the jail authorities and thereafter if further treatment was required appropriate arrangement could have been made by him. In any case without seeking prior permission of the concerned authorities he could not avail the further period of parole by taking decision himself. In such a situation if the amount deposited by him as a condition precedent for granting him parole is forfeited by the respondent, it cannot be said that the respondent authorities have not acted in accordance with law. Even otherwise, there are certain disputes raised by the respondent in the affidavit-in-reply with regard to the illness of the petitioner. In this view of the matter, this Court cannot go into the sufficiency of reasons given by the petitioner, while exercising discretionary powers under Article 226 of the Constitution of India. I, therefore, reject this petition. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]